

AMENDED IN SENATE JULY 14, 1995

AMENDED IN SENATE JUNE 27, 1995

AMENDED IN SENATE JUNE 19, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 76

Introduced by Assembly Member Morrow

December 22, 1994

An act to amend Sections 8111, 8112, 8114, 8150.5, 8150.7, 8150.9, 8250.5, 8284, 8392, and 9006 of, to add Section 9001.5 to, to add and repeal Sections 9001.6 and 9001.7 of, to repeal Section 8153 of, and to repeal and add Sections 8113, 8151, and 8152 of, the Fish and Game Code, relating to fish, ~~making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~ *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 76, as amended, Morrow. Commercial fishing: finfish: lobsters: sardines.

(1) Existing law authorizes persons operating a commercial fishing vessel registered in this state to land fish taken in a far offshore fishery, as defined, when those fish may be lawfully imported into this state from a foreign nation or from another state. Existing law also prohibits the operator of any vessel operating under that authorization from fishing in or landing fish from any waters within the 200-mile fishery conservation zone during any trip for which the operator has

received clearance by United States Customs for departure for the high seas.

This bill would redefine “far offshore fishery” to mean a fishery that lies outside the United States 200-mile exclusive economic zone, as defined by federal law. The bill would authorize the landing in this state of fish taken in a far offshore fishery which may be lawfully imported by persons operating a commercial fishing vessel registered in this state who took the fish in the far offshore fishery.

The bill would delete the requirement for clearance and declaration of the location of the catch on reentry to the United States Customs. The bill would, instead, require the operator to file a declaration with the Department of Fish and Game before departure and to complete and submit the return portion of the declaration to the department within 12 hours of arrival at a port in this state.

(2) Existing law permits the department to adjust the seasonal quota of sardines that may be taken under permit in relation to increases in the spawning population.

This bill would provide that the Pacific sardine season is from August 1 to July 31, inclusive. The bill would establish a 12,000-ton-per-season quota unless the department produces an estimate of the total biomass of the northern stock of sardines and uses that estimate to calculate a quota. The bill would also require the department to consider in-season adjustments to the quota at the request of the commercial fishing industry. The bill would permit sardines to be taken for live bait purposes at any time.

(3) Existing law establishes the tolerance for sardines taken incidentally to other fishing operations.

This bill would permit the Director of Fish and Game to establish those tolerances up to certain specified percentages of the landings.

(4) Existing law permits 250 tons of sardines to be taken, possessed, and landed for dead bait purposes during the period of March 1 to February 28, inclusive.

This bill would repeal that provision.

(5) Existing law permits *the* taking of, among other species, *rock crab* and California sheephead incidentally in a lobster trap—~~or~~, and *the taking of California sheephead*



incidentally in a crab trap being used to take rock crab *in Fish and Game Districts 19 and 118.5*, and any other species taken incidentally is required to be released.

This bill, instead, would permit ~~taking not more than 12 finfish other than sablefish and hagfish incidentally in a lobster trap or in a crab trap being used to take rock crab, except, in waters south of Point Arguello, no person would be permitted to possess sheephead that are taken in a lobster trap or a crab trap being used to take rock crab unless that person possesses a valid finfish trap permit issued under the bill~~ *the incidental taking of crab, other than Dungeness crab, in a lobster trap and would delete the authority to take California sheephead in a lobster trap or in a crab trap in those districts.*

(6) Under existing law, any person who operates or assists in operating any trap to take finfish or who possesses or transports finfish on a vessel when a trap is aboard is required to have a general trap permit issued by the department.

This bill would, notwithstanding that general trap permit requirement, require persons who take finfish with traps for commercial purposes in waters south of Point Arguello to obtain a finfish trap permit. The bill would set the fee for the permit at \$110 and, because the fee would be deposited under existing law in the Fish and Game Preservation Fund which is continuously appropriated, the bill would make an appropriation. The bill would limit the persons who may obtain a finfish trap permit to persons who held a general trap permit in the preceding permit year and who made specified landings of finfish taken in traps. The bill would provide that persons denied a permit may appeal to the Fish and Game Commission. The bill would provide for certain restrictions on the taking of finfish pursuant to the permit. This bill would also authorize the department to enter into contracts for the purpose of printing finfish permits and informational material and would exempt these contracts from certain provisions of the Public Contract Code.

(7) Existing law prohibits taking, possessing, or selling California halibut less than 22 inches in total length, except as specified. Existing law also authorizes a person who holds a commercial fishing license to possess for noncommercial use not more than 4 California halibut less than 22 inches in total

length or less than the minimum weight if taken incidentally in commercial fishing.

This bill would limit that incidental possession *at any time* to halibut taken with a gill net, trammel net, or trawl net while commercial fishing.

(8) Existing law continuously appropriates the Fish and Game Preservation Fund to the department and the commission to carry out the Fish and Game Code.

This bill would impose new duties on the department, thereby making an appropriation.

(9) Because this bill would create and change provisions of laws, the violation of which are crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(10) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: ~~2/3~~ majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8111 of the Fish and Game Code
2 is amended to read:

3 8111. "Far offshore fishery" means a fishery that lies
4 outside the United States 200-mile exclusive economic
5 zone, as defined by paragraph (6) of Section 1802 of Title
6 16 of the United States Code.

7 SEC. 2. Section 8112 of the Fish and Game Code is
8 amended to read:

9 8112. Notwithstanding any other section of this code,
10 fish taken in a far offshore fishery, which may be lawfully
11 imported, may be landed in this state by persons
12 operating a commercial fishing vessel registered
13 pursuant to Article 4 (commencing with Section 7880)
14 who took the fish in the far offshore fishery.

1 SEC. 3. Section 8113 of the Fish and Game Code is
2 repealed.

3 SEC. 4. Section 8113 is added to the Fish and Game
4 Code, to read:

5 8113. (a) Prior to departure from any port in the
6 United States for the purpose of taking fish in the far
7 offshore fishery, the operator of any vessel landing fish in
8 California that will be taken in the far offshore fishery
9 shall file a declaration with the department on forms
10 prescribed by the department.

11 (b) The declaration shall be valid when signed by the
12 vessel operator and completed with information
13 prescribed by the department.

14 (c) Upon completion of the trip and within 12 hours of
15 arrival at a port in this state, the operator of the vessel
16 shall complete and submit the return portion of the
17 declaration to the department.

18 SEC. 5. Section 8114 of the Fish and Game Code is
19 amended to read:

20 8114. It is unlawful for the operator of any vessel
21 operating under authority of this article to fish in, or land
22 fish from, any waters within the United States 200-mile
23 exclusive economic zone during any trip for which the
24 operator filed a declaration with the department to fish
25 in the far offshore fishery.

26 SEC. 6. Section 8150.5 of the Fish and Game Code is
27 amended to read:

28 8150.5. Sardines may not be taken or possessed on any
29 boat, barge, or vessel except pursuant to Section 8150.7.

30 (a) However, loads or lots of fish may contain 18
31 percent or less ~~by number of sardines that~~ *sardines, by*
32 *number, of the total number of sardines, Pacific*
33 *mackerel, and Jack mackerel when the sardines* are taken
34 incidentally to other fishing operations and ~~that~~ are
35 mixed with the other fish in the load or lot.

36 (b) This section does not prohibit the possession and
37 use of sardines imported into this state under a bill of
38 lading identifying the country of origin.

39 (c) Imported sardines may be used for dead bait under
40 regulations as the commission may prescribe.

1 (d) Subdivision (a) is operative only when the total
2 biomass of the northern stock of sardines is below 50,000
3 tons.

4 SEC. 7. Section 8150.7 of the Fish and Game Code is
5 amended to read:

6 8150.7. It is the intent of the Legislature to encourage
7 the proper utilization of the sardine resource by
8 providing for the conservation of the spawning stock
9 while allowing for the growth of a fishery with the
10 objective of optimizing sustainable yield.

11 The department shall establish a 12,000-ton-per-season
12 quota that may be taken under permits issued by the
13 department unless the department produces an estimate
14 of the total biomass of the northern stock of sardines.
15 When the department produces an estimate of the total
16 biomass of the northern stock of sardines, that estimate
17 shall be used to calculate the quota. A quota shall be
18 calculated so as not to exceed 15 percent of the total
19 biomass of the northern stock of sardines when the total
20 biomass is in excess of 50,000 tons. The department shall
21 consider within-season adjustments to the quota at the
22 request of the commercial fishing industry. Quota
23 adjustments shall be made based upon the best scientific
24 information available.

25 The department shall keep records of the catch and
26 when it appears that a quota will be reached, it shall notify
27 all permitholders of the date when that limit will be
28 reached and after which no sardines may be taken, and
29 the department shall notify all permittees of that closure.

30 SEC. 8. Section 8150.9 of the Fish and Game Code is
31 amended to read:

32 8150.9. (a) The Pacific sardine season is from August
33 1 to July 31, inclusive.

34 (b) Notwithstanding Section 8150.8 or any other
35 provision of this article governing the quota of sardines,
36 the department shall determine on or before May 15 each
37 year if there is any portion of the quota for the taking of
38 sardines established pursuant to Section 8150.7 that has
39 not been taken on or before April 30, and if the
40 department determines that a portion of the quota has

1 not been taken, the department shall reallocate the total
2 remaining amount on or before May 15 with one-half of
3 the amount allocated for fishermen landing their catches
4 north of San Simeon Point and one-half allocated for
5 fishermen landing their catches south of San Simeon
6 Point. The department shall also determine on or before
7 July 1 each year if there is any portion of a quota that has
8 not been taken and shall make that unused portion
9 available to all permittees regardless of where they land
10 their catches. Except for provisions governing the quota,
11 all other provisions of law regulating the portion so
12 reallocated shall apply to the reallocated portion.

13 SEC. 9. Section 8151 of the Fish and Game Code is
14 repealed.

15 SEC. 10. Section 8151 is added to the Fish and Game
16 Code, to read:

17 8151. After a season quota or quota adjustment has
18 been established, the director, after consulting with the
19 commercial fishing industry and considering recent
20 trends in mixed landings, may establish a tolerance of
21 Pacific sardines incidentally taken mixed with other
22 species of up to 50 percent by number of *the total number*
23 *of Pacific sardines, Pacific mackerel, and Jack mackerel*
24 in landings greater than three tons, and up to 100 percent
25 for landings of three tons or less.

26 SEC. 11. Section 8152 of the Fish and Game Code is
27 repealed.

28 SEC. 12. Section 8152 is added to the Fish and Game
29 Code, to read:

30 8152. In addition to any other provision of this article,
31 sardines may be taken and possessed for live bait purposes
32 at any time.

33 SEC. 13. Section 8153 of the Fish and Game Code is
34 repealed.

35 SEC. 14. Section 8250.5 of the Fish and Game Code is
36 amended to read:

37 8250.5. (a) Subject to this article and Article 1
38 (commencing with Section 9000) of Chapter 4, a lobster
39 trap, as described in Section 9010, may be used to take

1 lobster for commercial purposes under a lobster permit
2 issued pursuant to Section 8254.

3 (b) The following species may be taken incidentally in
4 lobster traps being fished under the authority of a lobster
5 permit issued pursuant to Section 8254, and any other
6 species taken incidentally shall be released:

7 ~~(1) Rock crab, as defined by Section 8275.~~

8 ~~(2) Finfish, other than sablefish and hagfish, except~~
9 ~~that, in waters south of a line extending due west true~~
10 ~~from Point Arguello, no person may possess sheephead~~
11 ~~that are taken in a lobster trap unless that person~~
12 ~~possesses a valid permit issued pursuant to Section 9001.5.~~
13 ~~However, not more than 12 finfish may be possessed on~~
14 ~~any boat.~~

15 ~~(3)~~

16 (1) *Crab, other than Dungeness crab.*

17 (2) Kelleys whelk.

18 ~~(4)~~

19 (3) Octopus.

20 (c) Spiny lobsters taken in the manner commonly
21 known as skindiving or by a person using self-contained
22 underwater breathing apparatus shall not be sold.

23 SEC. 15. Section 8284 of the Fish and Game Code is
24 amended to read:

25 8284. (a) Subject to this article and Article 1
26 (commencing with Section 9000) of Chapter 4, crab traps,
27 as described in Section 9011, may be used to take
28 Dungeness crab for commercial purposes. Any fish may
29 be taken incidentally in crab traps being used to take
30 Dungeness crab.

31 (b) Any other species taken incidentally in a crab trap
32 being used to take rock crab, except as provided in this
33 subdivision, shall be released. The following species may
34 be taken incidentally in crab traps being used to take rock
35 crab under a permit issued pursuant to Section 9001 in
36 Districts 19 and 118.5, and any other species taken
37 incidentally with a crab trap being used to take rock crab
38 shall be released:

39 ~~(1) Finfish, other than sablefish and hagfish, except~~
40 ~~that, in waters south of a line extending due west true~~

1 ~~from Point Arguello, no person may possess sheephead~~
2 ~~that are taken in a crab trap unless that person possesses~~
3 ~~a valid permit issued pursuant to Section 9001.5.~~
4 ~~However, not more than 12 finfish may be possessed on~~
5 ~~any boat.~~

6 ~~(2)–~~

7 (1) Kellet's whelk.

8 ~~(3)–~~

9 (2) Octopus.

10 ~~(4)–~~

11 (3) Crabs, other than the genus Cancer.

12 SEC. 16. Section 8392 of the Fish and Game Code is
13 amended to read:

14 8392. (a) No California halibut may be taken,
15 possessed, or sold that measures less than 22 inches in total
16 length, unless it weighs four pounds or more in the round,
17 three and one-half pounds or more dressed with the head
18 on, or three pounds or more dressed with the head off.
19 Total length means the shortest distance between the tip
20 of the jaw or snout, whichever extends farthest while the
21 mouth is closed, and the tip of the longest lobe of the tail,
22 measured while the halibut is lying flat in natural repose,
23 without resort to any force other than the swinging or
24 fanning of the tail.

25 ~~(b) The holder of a commercial fishing license may~~
26 ~~possess during one day for noncommercial use not more~~

27 (b) *Not more* than four California halibut of less than
28 22 inches in total length or less than the minimum weights
29 specified in subdivision (a) *may be possessed aboard a*
30 *vessel for noncommercial use at any time*, if taken
31 incidentally with a gill net, trammel net, or trawl net
32 while commercial fishing.

33 SEC. 17. Section 9001.5 is added to the Fish and Game
34 Code, to read:

35 9001.5. Notwithstanding Section 9001, a revocable,
36 nontransferable finfish trap permit is required to take
37 finfish in traps for commercial purposes in ocean waters
38 between a line extending due west true from Point
39 Arguello in Santa Barbara County and the United

1 States-Mexico international boundary line. A finfish trap
2 permit shall only be issued as follows:

3 (a) For the 1996–97 permit year, to persons who held
4 a general trap permit during the 1995–96 permit year and
5 who landed finfish taken in traps for commercial
6 purposes during the 1995–96 permit year in this state as
7 reported on one or more fish landing receipts signed by
8 the applicant and submitted to the department pursuant
9 to Section 8043.

10 (b) For the 1997–98 permit year and thereafter, to
11 persons who held a finfish trap permit to take finfish
12 during the immediately preceding permit year and who
13 landed at least 50 pounds of finfish taken in finfish traps
14 as reported on one or more fish landing receipts signed
15 by the applicant and submitted to the department
16 pursuant to Section 8043 during the immediately
17 preceding permit year.

18 (c) Any applicant who is denied a finfish trap permit,
19 for any reason, may appeal the denial to the commission
20 in writing, describing the basis for the appeal. The appeal
21 shall be received by the commission not later than ~~July~~
22 ~~1 following the permit year in which the applicant last~~
23 ~~held a valid trap permit authorizing the take of finfish.~~ 60
24 *days after the date of denial.*

25 (d) This section shall become operative on April 1,
26 1996.

27 SEC. 18. Section 9001.6 is added to the Fish and Game
28 Code, to read:

29 9001.6. (a) Finfish may be taken with a permit issued
30 pursuant to Section 9001.5 according to the following
31 limitations:

32 (1) No lobster shall be possessed aboard or landed
33 ~~from any vessel operating under the authority of a finfish~~
34 ~~trap permit unless the person operating the vessel from~~
35 ~~any vessel on which finfish are also present unless a~~
36 ~~person is on board who possesses a valid finfish permit~~
37 ~~pursuant to Section 9001.5 and who also possesses a valid~~
38 permit issued pursuant to Section 8254 and is in
39 compliance with all other provisions of this article and
40 Article 5 (commencing with Section 8250) of Chapter 2

1 and the regulations adopted pursuant to these articles.
2 Lobster shall not be used as bait in finfish traps, and any
3 lobster found in finfish traps that may not be possessed
4 pursuant to this article or Article 5 (commencing with
5 Section 8250) of Chapter 2 shall be returned to the water
6 immediately.

7 (2) During the period from one hour after sunset to
8 one hour before sunrise finfish traps that are left in the
9 water shall be unbaited with the door secured open.
10 However, if, for reasons beyond the control of the
11 permittee, all trap doors cannot be secured open prior to
12 one hour after sunset, the permittee shall immediately
13 notify the department.

14 (3) Timed buoy release mechanisms commonly
15 termed “popups” shall not be used on buoy lines attached
16 to finfish traps.

17 (4) Trap destruction devices used on finfish traps shall
18 conform to the current requirements for those devices
19 adopted by the commission.

20 (5) No finfish traps shall be within 750 feet of any pier,
21 breakwall, or jetty in Districts 19, 19A, 19B, 20, 20A, 20B,
22 or 21.

23 (6) Not more than 50 finfish traps may be used ~~at any~~
24 ~~one time on board a vessel fishing~~ in state waters along the
25 mainland shore.

26 (7) The mesh of any finfish trap shall ~~not measure less~~
27 ~~than measure~~ two inches by two inches.

28 (b) The fee for the finfish trap permit issued pursuant
29 to Section 9001.5 is one hundred ten dollars (\$110) and
30 shall be valid from April 1 to March 31, inclusive. Only one
31 finfish trap permit shall annually be issued to any person.

32 (c) A permit issued pursuant to Section 9001.5 may be
33 revoked or cancelled by the commission when
34 recommended by the department upon a conviction for
35 a violation of this article or regulations adopted pursuant
36 thereto by the permittee, the permittee’s agents,
37 servants, employees, or persons acting under the
38 permittee’s direction and control. A permit may be
39 revoked for a period of not more than one year from the
40 date of revocation for a first or second conviction for a

1 violation of this article or regulations adopted pursuant
2 thereto and may be permanently revoked or canceled for
3 a third or subsequent conviction for a violation of this
4 article or regulations adopted pursuant thereto.

5 (d) This section shall become operative on April 1,
6 1996.

7 (e) This section shall become inoperative on April 1,
8 1998, and as of January 1, 1999, is repealed, unless a later
9 enacted statute, which is enacted before January 1, 1999,
10 deletes or extends that date.

11 SEC. 19. Section 9001.7 is added to the Fish and Game
12 Code, to read:

13 9001.7. (a) The department may enter into contracts
14 for the purpose of producing and printing finfish trap
15 permits and related informational materials as may be
16 necessary pursuant to Sections 9001.5 and 9001.6 without
17 complying with Sections 10301, 10339, and 10340 of the
18 Public Contract Code.

19 (b) This section shall remain in effect only until April
20 1, 1996, and shall be repealed on January 1, 1997, unless a
21 later enacted statute, which is enacted before January 1,
22 1997, deletes or extends that date.

23 SEC. 20. Section 9006 of the Fish and Game Code is
24 amended to read:

25 9006. Any buoy used to mark a trap shall be clearly
26 and distinctively marked with a buoy identification
27 number, as follows:

28 (a) The buoy identification number for a lobster trap
29 used to take lobster under Section 9010 ~~is the lobster~~
30 ~~permit number issued pursuant to Section 8254.~~ *and*
31 *pursuant to Section 8254 is the fisherman's commercial*
32 *fishing license number followed by the letter "P."*

33 (b) The buoy identification number for a trap, which
34 is used under a general trap permit issued pursuant to
35 Section 9001 or a crab trap used to take Dungeness crab
36 under Section 9011, is the commercial license number
37 issued to the operator of the trap pursuant to Section 7852.

38 (c) The buoy identification number for a trap used to
39 take finfish under a permit issued pursuant to Section
40 9001.5 is the commercial fishing license number of the

1 permittee, issued pursuant to Section 7852, followed by
2 the letter Z.

3 SEC. 21. No reimbursement is required by this act
4 pursuant to Section 6 of Article XIII B of the California
5 Constitution because the only costs that may be incurred
6 by a local agency or school district will be incurred
7 because this act creates a new crime or infraction,
8 eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section
10 17556 of the Government Code, or changes the definition
11 of a crime within the meaning of Section 6 of Article
12 XIII B of the California Constitution.

13 Notwithstanding Section 17580 of the Government
14 Code, unless otherwise specified, the provisions of this act
15 shall become operative on the same date that the act
16 takes effect pursuant to the California Constitution.

17 ~~SEC. 22. This act is an urgency statute necessary for~~
18 ~~the immediate preservation of the public peace, health,~~
19 ~~or safety within the meaning of Article IV of the~~
20 ~~Constitution and shall go into immediate effect. The facts~~
21 ~~constituting the necessity are:~~

22 ~~In order to revise the statutory provisions governing~~
23 ~~the offshore fishery and to prevent the depletion of finfish~~
24 ~~stocks as soon as possible, and to prevent a shortage of live~~
25 ~~bait at the earliest time possible due to a reduction in live~~
26 ~~bait resources, it is necessary that this act take effect~~
27 ~~immediately.~~